

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Rules and Regulations)	
Implementing the Telephone)	CC Docket No. 02-278
Consumer Protection Act)	
of 1991)	
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SUPPLEMENTAL REPLY COMMENTS OF ROBERT BIGGERSTAFF

Robert Biggerstaff hereby submits these supplemental reply comments in opposition to the Petition of Soundbite Communications, Inc., (“Petitioner”) for a declaratory ruling regarding “confirmation” text messages, pursuant to the Commission’s Public Notice DA 12-511.

After the close of the comment period in this matter, the Seventh Circuit Court of Appeals issued its unanimous decision in *Soppet v. Enhanced Recovery Co., LLC*, --- F.3d ---, 2012 TCPA Rep. 2297, 2012 WL 1650485 (7th Cir. May 11, 2012). In that opinion, Judge Easterbrook noted:

[P]redictive dialers lack human intelligence and, like the buckets enchanted by the Sorcerer’s Apprentice, continue until stopped by their true master.

In this manner, Judge Easterbrook and the unanimous panel of the Seventh Circuit recognize (as noted in my earlier comments) that modern computer-interfaced dialers (including those that send text messages to cell phones without human intervention on each call) are the equivalent in capacity — and injury — to the autodialers that Senator Hollings identified as telephone terrorism when introducing the TCPA in 1991.

The *Soppet* court went on to describe multiple options available to those using predictive dialers so they can be employed in compliance with the TCPA. Vendors also offer TCPA-compliant

predictive dialing solutions.¹ There is simply no occasion to walk back the Commission's long-established holding that predictive dialers are an "automatic telephone dialing system" under the TCPA.

For the foregoing reasons, the Petition should be DENIED.

¹ See, e.g., *New Radius Cell Manager Strictly Follows TCPA Law*, available at <<http://www.insidearm.com/daily/collection-laws-regulations/collection-laws-and-regulations/new-radius-cell-manager-strictly-follows-tcpa-law/>>.